

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KEITH MARTIN MACK,

Plaintiff,

v.

THE AMERICAN NATIONAL BANK OF BEAVER DAM,
SAGER & COLWIN LAW OFFICES,
EDWARD C. JACOBS, SAM KAUFMAN,
MARK A. HEUER, MELISSA L. HAESSLY,
HONORABLE WILLIAM D. JOHNSTON,
KIM GRAF, KARIN LASKA and DOES 1-25,

Defendants.

ORDER

10-cv-557-bbc

In this proposed civil action, plaintiff Keith Martin Mack contends that defendants violated several federal and state laws by proceeding with a foreclosure action against plaintiff's property. On October 27, 2010, I dismissed the case for lack of jurisdiction, concluding that plaintiff's claims were barred completely by the Rooker-Feldman doctrine. In particular, plaintiff was seeking to overturn decisions made by the state court judge in the foreclosure action. Now before the court are several motions filed by plaintiff, including a notice of removal in which he purports to remove the state foreclosure action to this court, dkt. #11, a proposed second amended complaint, dkt. #12, a motion for change of venue, dkt. #13, and a motion for

declaratory relief, dkt. #14. Because plaintiff's attempt to remove the foreclosure action is invalid and he has provided no justification for reopening this case, these motions will be denied.

DISCUSSION

In his notice of removal, plaintiff states that he is removing Wisconsin case number 2010CV44, American National Bank of Beaver Dam v. Mack, the foreclosure action that was pending previously against him in the Circuit Court for Lafayette County, Wisconsin. (The state court's docket shows that this case is now closed.) Plaintiff's removal attempt is invalid for several reasons. First, plaintiff asserts that he is removing the foreclosure action pursuant to 28 U.S.C. § 1441. However, under § 1441, an action is removable to federal court only if it could have been filed in federal court originally. Plaintiff has not shown that this court would have original jurisdiction over the foreclosure action. Although he points to several federal statutes that he believes defendants violated in pursuing the foreclosure and sale of his property, these statutes were not at issue in the state case. Thus, they are irrelevant to whether this court could exercise jurisdiction over the foreclosure action.

Additionally, a party seeking removal must comply with the procedures set out in 28 U.S.C. § 1446, including the requirement that he file a notice of removal within 30 days of his receipt of the initial pleading in the state case. The docket in the foreclosure action indicates that the state court proceeding began in March 2010 and that plaintiff was involved in the proceedings by June 2010. Further, the docket in the foreclosure case shows that the circuit

court entered an order confirming the sale of plaintiff's property and entered a money judgment against plaintiff on January 5, 2011. In other words, the foreclosure action is now closed. Therefore, the time for removal has long since passed.

Because plaintiff has filed a proposed second amended complaint, it may be that he is actually seeking to reopen his previous federal case, rather than attempting to remove the foreclosure action. However, even if I construe plaintiff's motion as one to reopen his federal case, I would deny the motion. Plaintiff's proposed second amended complaint suffers from the same problems as his previous complaints; he is seeking to overturn the state court's decisions in the foreclosure action. As I explained to plaintiff previously, such claims are barred by the Rooker-Feldman doctrine and should have been raised during the state-court proceedings or on direct appeal. Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 284 (2005); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); see also Taylor v. Federal National Mortgage Ass'n, 374 F.3d 529, 532 (7th Cir. 2004) (claims seeking to set aside state court judgments are de facto appeals and are barred). Therefore, I will deny plaintiff's attempt to remove the foreclosure action or reopen his federal case.

ORDER

IT IS ORDERED that

1. Plaintiff Keith Mack's motion to reopen this case, dkt. #11, motion for leave to file

a second amended complaint, dkt. #12, motion for change of venue, dkt. #13, and motion for declaratory relief, dkt. #14, are DENIED for lack of jurisdiction.

2. Wisconsin case number 2010CV0044 is REMANDED to the Circuit Court for Lafayette County, Wisconsin.

Entered this 7th day of March, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge